

Town of Brookline

BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Massachusetts



TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070045

Petitioner, Yigal Banker applied to the Board of Appeals for zoning relief to widen the drive in front of his dwelling to provide room for additional parking at 54 Woodcliff Road.

On July 19, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed September 6, 2007 at 7:00 p.m. in Hunniman Hall on the second floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published August 16 and 23, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE

Harry Miller. Attorney Jacob Walters of Goldenberg & Walters, 7 Harvard Street, Brookline, MA, presented the case before the board. The petitioner, accompanied by his wife, Rely, was present at the hearing.

Attorney Walters described the project as a proposal to widen the parking drive in front of the dwelling to provide room for additional parking. This would involve removing one of the two retaining walls for the parking area and reconstructing it so that the driveway is approximately 18 feet 9 inches wide. Currently the driveway is approximately 11 feet wide. The other existing retaining wall would be repaired. The new retaining wall would actually be a combination of two walls, terraced to allow for plantings next to the parking area. The outer wall would be approximately 1.5 feet taller than the inner wall, for a maximum height of 5 feet. The drywell at the bottom of the driveway would be extended to service the entire width of the parking area. Finally, two new sets of stairs, one leading from the parking area to the front entrance and one leading from the parking area to the side yard, would be installed.

Attorney Walters said that the existing garage on the property is extremely small, there is parking for only one vehicle and therefore no room for visitors or additional vehicles of the family. He said that the project is mitigated by the fact that the topography of the lot will make it difficult to see the additional parking and in the neighborhood, others have solved their parking issue similarly, in front, next to the garage. He said that the relief required is from **Section 6.04.12** which would allow the Board to waive dimensional requirements for new parking to service existing structures and **Section 8.02.2** because the proposal constitutes the extension of an existing non-conformity. Attorney Walters stated that concern was raised at the Planning Board about potential damage to the rather

large street tree in front of the home. He said the petitioners had no intention of harming the tree and could modify the plan to decrease the width of the curb cut. He said that the petitioners will engage mitigation measures to protect the tree during construction. Also he said that the project was very conservative and would not diminish the fabric of the neighborhood.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal. No-one responded and Attorney Walters reminded the Board of the letters of support from five neighbors dated July 17, 2007, submitted as part of the Planning Board report.

Planner, Lara Curtis then reviewed the relief required for the project:

Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities: Front yard setback.

	<u>Required/Minimum</u>	<u>Proposed</u>	<u>Finding</u>
Front Yard Setback	20 feet	6 feet (estimate)	<u>Variance / Special Permit*</u>

*Under Section 6.04.12, the Board of Appeals may waive dimensional requirements by special permit for new parking facilities to serve existing structures and land uses.

Section 8.02.2 - Alteration or Extension

A special permit may be granted under Section 8.02.2 to alter or enlarge a non-conforming condition.

Ms. Curtis stated that the Planning Board is not opposed to this proposal to widen the front driveway to provide parking for an additional car if efforts are taken to preserve and protect the existing street tree in front of the dwelling. The width of the curb cut for the proposed driveway should be reduced or remain the same width as existing while the parking area is expanded. The Board is generally not in favor of front yard parking, but this proposal, if modified, would expand minimally upon an existing condition while

providing an additional parking space for the site and bringing the dwelling into further conformance with the parking requirements of the Zoning By-law. The proposed parking area design would provide an area for landscaping, and since the driveway slopes down to the basement, the cars would not be as visible from the street. Additionally, several dwellings along Woodcliff Road have two-car parking areas in their front yard setbacks, so this proposal is not out of character with the surrounding neighborhood. Ms. Curtis said that the Planning Board recommends approval of the proposal and the plot plan titled "Certified Plot Plan," prepared by Stephen LaMonica, dated May 31, 2007, and the architectural plans titled "Banker Residence," prepared by Dena Zyroff and last dated May 16, 2007, subject to the following conditions:

- 1. Prior to issuance of a building permit, a final site plan, indicating a reduced curb cut width, the location of the existing street tree in front of the lot, and retaining wall materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. The existing street tree in front of the dwelling shall be preserved. Prior to issuance of a building permit, details of the techniques to be used to ensure the preservation and protection of the tree during construction shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. No vehicle may be parked in the parking area so that any portion of the vehicle overhangs onto the sidewalk.**
- 4. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, indicating parking area materials, curb cut width, and the locations of the street tree and fire hydrant in front of the lot, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the retaining walls, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock described the project and said all the required relief could be granted by two

Special Permits. Mr. Hitchcock stated that relief was required for the design of off-street parking facilities under Section 6.04.12 to waive dimensional parking requirements for new parking to serve existing structures. Also, relief was required under Section 8.02.2 because of the existing non-conformity. Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under Section 6.04.12 and Section 8.02.2 of the Zoning Bylaw. The Board makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the board voted unanimously to grant all the Special Permit relief with the following conditions:

- 1. Prior to issuance of a building permit, a final site plan, indicating a reduced curb cut width, the location of the existing street tree in front of the lot, and retaining wall materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. The existing street tree in front of the dwelling shall be preserved. Prior to issuance of a building permit, details of the techniques to be used to ensure the preservation and protection of the tree during construction shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

3. No vehicle may be parked in the parking area so that any portion of the vehicle overhangs onto the sidewalk.
4. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, indicating parking area materials, curb cut width, and the locations of the street tree and fire hydrant in front of the lot, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the retaining walls, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

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REGISTRARS OF VOTERS

07 SEP 14 AM 8:45

Unanimous Decision of
The Board of Appeals



Diane R. Gordon

Filing Date:

A True Copy:

ATTEST



Patrick J. Ward

Clerk

Board of Appeals